Peng Bee Sdn Bhd v Teoh Liang Teh & Ors

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO P–02–568 OF 1995
SHAIK DAUD, SITI NORMA YAAKOB AND HAIDAR JJCA
17 OCTOBER 2000

Limitation *— Contract — Action for breach of contract for transfer of land — Failure to deliver vacant possession — Whether claim statute barred due to limitation — Limitation Act 1953 s 9*

By a sale and purchase agreement in 1980, the appellant and one Teoh Tiang Ming (deceased) agreed to purchase land from the third and fourth respondent. The appellant paid the deposit and part payment of the purchase price. The land was subsequently sold by the first to fourth respondents to the fifth, sixth and seventh respondents but the sale did not go through as the first to fourth respondents could not deliver vacant possession. It was contended by the first to fourth respondents that by a letter dated 7 June 1982, the deceased had proposed to sell the property without vacant possession at a lower price but the appellant had refused the offer. Notice was then sent informing the appellant that the first to fourth respondents were unable to give vacant possession of the land as stipulated in the terms of the sale and purchase agreement. This resulted in breach of the agreement. On 13 January 1995, the appellant filed a writ claiming for specific performance of the sale and purchase agreement. The first to fourth respondents applied to strike out the action on the ground that the claim was statute barred and the action was vexatious and an abuse of court process. It was contended by the first to fourth respondents that the appellant's claim was commenced more than six years after the cause of action arose and was therefore caught by limitation.

Held, striking out the action, dismissing the appeal and ordering the deposit to go to account of costs:

For the purpose of limitation, time begins to run from the date of any infringement or threat of infringement of the appellant's right under a sale and purchase agreement (see p 4E); *Nasri v Mesah* [1971] 1 MLJ 32 followed. In the present appeal, time began to run following the inability of the first to fourth respondents to give vacant possession. The present action was filed more than 12 years after the cause of action arose and was, pursuant to s 9 of the Limitation Act 1953, statute barred (see p 4F).

[**Bahasa Malaysia summary**

Melalui satu perjanjian jualbeli pada tahun 1980, perayu serta seorang Teoh Tiang Ming (simati) bersepakat membeli tanah daripada responden ketiga dan keempat. Perayu membayar wang deposit dan

pembayaran sebahagian harga belian. Tanah tersebut kemudiannya dijual oleh responden pertama hingga keempat kepada responden kelima, keenam dan ketujuh tetapi urusan jualan tersebut tidak berjaya kerana responden pertama hingga keempat tidak dapat menyampaikan milikan kosong. Ditegaskan oleh responden pertama hingga keempat bahawa melalui surat yang bertarikh 7 Jun 1982, simati telah bercadang menjual hartanah tersebut tanpa milikan kosong pada harga yang lebih rendah tetapi perayu telah menolak tawaran tersebut. Notis kemudiannya disampaikan memberitahu perayu bahawa responden pertama hingga keempat tidak dapat menyampaikan milikan kosong tanah tersebut seperti mana yang ditetapkan dalam terma perjanjian jualbeli tersebut. Ini mengakibatkan kemungkiran perjanjian tersebut. Pada 13 Januari 1995, perayu memfailkan writ menuntut pelaksanaan khusus perjanjian jualbeli tersebut. Responden pertama hingga keempat memohon ingin membatalkan tindakan tersebut atas alasan tuntutan itu dihalang statut dan tindakan itu menyusahkan dan merupakan penyalahgunaan proses mahkamah. Ditegaskan oleh responden pertama hingga keempat bahawa tuntutan perayu dimulakan lebih dari enam tahun selepas alasan tindakan itu muncul, dan oleh itu dihalang oleh pembatasan had masa.

Diputuskan, membatalkan tindakan tersebut dan mengarahkan deposit dimasukkan ke dalam akaun kos:
Bagi tujuan pembatasan, masa mulai diambilkira dari tarikh mana-mana pelanggaran atau ugutan pelanggaran hak perayu di bawah perjanjian jualbeli (lihat ms 4E); *Nasri v Mesah* [1971] 1 MLJ 32 diikut. Dalam rayuan ini, masa mulai diambilkira berikutan kegagalan responden pertama hingga keempat menyampaikan milikan kosong. Tindakan semasa ini telah difailkan lebih dari 12 tahun selepas alasan tindakan timbul dan menurut s 9 Akta Pembatasan 1953, adalah dihalang statut (lihat ms 4F).]

Notes

For a case on action for breach of contract for transfer of land, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) para 1812.

Cases referred to

Nasri v Mesah [1971] 1 MLJ 32 (folld)

Legislation referred to

Limitation Act 1953 ss 6(1)(a), 9
Rules of the High Court 1980 O 18 rr 19(1)(a), (b), (c)

Appeal from: Civil Suit No 22–6 of 1995 (High Court, Pulau Pinang)

Teja Singh Penesar (*Teja Singh Penesar & Co*) for the appellant.

Mahinder Singh Dulku (*Bernard Kok* with him) (*Ban Eng Anual & Foong*) for the first, second, third and fourth respondents.

Chua Leng Poh (*Khor Anuar & Khong*) for the fifth, sixth and seventh respondents.

Shaik Daud JCA. (delivering judgment of the court): This appeal is from the decision of the Penang High Court which had confirmed the order of the learned senior assistant registrar in allowing an application by the respondents to strike out the writ and statement of claim filed by the appellant under O 18 r 19(1)(a)(b) and/or (c) of the Rules of the High Court 1980.

Briefly, the facts are that on 11 August 1980, by a sale and purchase agreement made between the appellant of the one part and one Teoh Tiang Ming (deceased) together with the third and fourth respondents of the other part, the appellant agreed to purchase three pieces of land known as Holdings No 81, 82 & 83, s 1 Town of Butterworth, Province Wellesley North, for a consideration of RM422,525. Pursuant to the said agreement, the appellant paid a sum of RM42,252.50 as deposit and part payment of the purchase price. The balance of the purchase price was to be paid in three instalments, the last of such instalments was to be made within 12 months of the date of the execution of the sale and purchase agreement, or within one month from the receipt of a written notice from the first to fourth respondents confirming that vacant possession of the said properties could be delivered to the appellant, whichever was the later.

The first to fourth respondents subsequently sold the said properties to the fifth, sixth and seventh respondents on 11 April 1994, who soon thereafter lodged a caveat over the properties.

The sale did not go through because the first to fourth respondents could not deliver vacant possession. The appellant filed a writ and statement of claim on 13 January 1995 for specific performance and other ancillary orders. The first to fourth respondents filed an application for the action to be struck out under O 18 r 19(1)(a)(b) and (c) and a similar application was filed thereafter by the fifth to seventh respondents. The first to fourth respondents' reasons for striking out were that the claim was statute barred and the action was vexatious and an abuse of the court process.

The first to fourth respondents contend that the cause of action arose around 1982 when the deceased, Teoh Tiang Ming, conveyed to the appellant's representative that he was unable to sell the land with vacant possession, in accordance with the sale and purchase agreement. Pursuant to this, a letter dated 7 June 1982 was sent to the appellant's solicitors, proposing to sell the said properties without vacant possession but at a lower price. The appellant did not accept this offer. Therefore, it is contended that the breach of the 1980 agreement occurred in 1982 when the first to fourth respondents failed to persuade the appellant to purchase the properties without vacant possession but at a lower price. It is further contended that this offer was to make substantive variations to the sale and purchase

agreement. Since the first to fourth respondents could not perform the agreement, a breach had thereby occurred. The cause of action had then arisen to enable the appellant to sue the first to fourth respondents. As this was a claim for specific performance of a sale and purchase agreement, which essentially is a claim based on contract, s 6(1)(a) of the Limitation Act 1953 applies, and the action having been commenced more than six years after the cause of action arose, is caught by limitation. The statement of defence fled by the first to fourth respondents centered mainly on limitation but the appellant failed to reply.

The issue, therefore, is when did the period of limitation begin to run in this case. It is contended by the learned counsel for the first to fourth respondents that it ran from 1982 when notice was sent to the appellant that the first to fourth respondents were unable to give vacant possession pursuant to the terms of the sale and purchase agreement. In *Nasri v Mesah* [1971] 1 MLJ 32, the appellant claimed specific performance of a sale and purchase agreement dated 5 June 1947, for the sale of land by the respondent to him. The appellant had paid the agreed price for the land but no document of transfer was executed because of a moratorium then in force over the land. After the expiration of the moratorium on 30 September 1949, the appellant approached the respondent on several occasions and requested her to execute the transfer of the land but she failed to do so. Eventually the appellant commenced the action on 3 March 1967. The action was dismissed in the High Court on the ground of limitation.

On appeal, the Federal Court in allowing the appeal held that time begins to run, for the purpose of limitation, from the date of any infringement or threat of infringement of the appellant's right under the agreement.

In the present appeal we agree with the learned counsel for the first to fourth respondents that time began to run from the notice dated 7 June 1982 following the inability of the first to fourth respondents to give vacant possession. The present action filed on 13 January 1995 — more than 12 years after the cause of action arose, is, we say, statute barred pursuant to s 9 of the Limitation Act 1953 (see *Nasri v Mesah*). The action is unmaintainable and is rightly struck out. As for the fifth and seventh respondents, they are subsequent purchasers and they ought not to be made parties to the action as there is no cause of action against them. We had therefore, dismissed the appeal with costs, and ordered the deposit to go to account of costs.

Action struck out and appeal dismissed.

Reported by Anitha MI Raman